

## MINUTES

### KANSAS DUI COMMISSION

November 15, 2010  
Room 346-S—Statehouse

#### Members Present

Senator Thomas C. (Tim) Owens, Chairperson  
Representative Janice Pauls, Vice-chairperson  
Representative Lance Kinzer  
Greg Benefiel, Assistant District Attorney, Douglas County  
Pete Bodyk, Kansas Department of Transportation  
Major Mark Bruce, Kansas Highway Patrol  
Leslie Moore substituted for Wiley Kerr, Kansas Bureau of Investigation  
Honorable Jennifer Jones  
Deborah Stidham substituted for Don Jordan, Secretary, Kansas Department of Social  
and Rehabilitation Services  
Retired Police Chief Ed Klumpp  
Mary Ann Khoury, DUI Victim Center of Kansas  
Chris Mechler, Court Services Officer  
Helen Pedigo, Executive Director, Kansas Sentencing Commission  
Marcy Ralston, Kansas Department of Revenue  
Honorable Peter V. Ruddick, 10th Judicial District  
Dalyn Schmitt, Substance Abuse Professionals  
Les Sperling, President, Kansas Association of Addiction Professionals  
Jeremy Thomas, Parole Officer  
Doug Wells, Attorney, Kansas Bar Association  
Roger Werholtz, Secretary, Kansas Department of Corrections  
C. W. Klebe substituted for Karen Wittman, Attorney General's Office  
Sheriff Ken McGovern, Douglas County

#### Member Absent

Senator David Haley

#### Staff Present

Athena Andaya, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Jason Thompson, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes  
Karen Clowers, Committee Assistant

## Others Attending

See attached list.

The meeting was called to order by Chairperson Owens at 9:10 a.m.

The minutes of October 28, 2010, were reviewed and corrections made to clarify the wording on Greg Benefiel's amended motion on page six, Greg Benefiel's motion on page five, and spelling corrections. *Greg Benefiel moved and Judge Ruddick seconded to approve the Commission minutes of October 28, 2010, as corrected. Motion carried.*

The Chairperson called on Jason Thompson, staff revisor, to review the proposed draft bill entitled DUI Commission Draft #3 (Attachment 1).

New Section 1 includes language ensuring that there are no automatic professional license consequences due to a first DUI conviction or diversion.

Mr. Thompson requested the Commission's decision regarding whether the hearings are required to be conducted in accordance with the Kansas Administrative Procedure Act. It was the consensus of the Commission to include this language.

New Section 2 contains language creating the crime of refusing to submit to a test to determine the presence of alcohol or drugs. The majority of the discussion was based on subsection (l), which defines what is a conviction and which convictions are taken into account when determining whether a conviction is a first, second, third, or subsequent conviction for sentencing.

*Doug Wells moved, Senator Owens seconded, to reconsider the issue of criminalization of test refusals. Motion failed.*

*Greg Benefiel moved, Ed Klumpp seconded, to limit to one diversion only for alcohol-related offenses listed in New Section 2, subsection (l) of the bill draft and clarify that no diversion would be allowed if the person has any prior conviction for an offense listed in subsection (l). Motion carried. Doug Wells voted no and requested his vote be recorded.*

It was recommended to change page 6, subsection (i)(3) of the bill draft to limit the look back to July 1, 1996, on diversions under subsection (i)(1). There was no objection.

*Doug Wells moved, Les Sperling seconded, to limit the look back to July 1, 2011, for prior convictions for test refusals for purposes of sentencing enhancements. Motion failed.*

*Doug Wells moved, Judge Ruddick seconded, to establish an enhancement date of July 1, 2011, for subsections (i)(1), (i)(2), and (i)(3). Motion failed.*

Ed Klumpp noted the need to clarify the five-consecutive-day imprisonment language in the new crime for refusing to submit to a test to determine the presence of alcohol or drugs [subsection (b)(1) and other similar references throughout the bill]. It was the consensus of the Commission to include the language.

Doug Wells requested the inclusion of house arrest on page 2, (b)(1). It was the consensus of the Commission to include the language.

Section 3 includes changes regarding DUI involving commercial vehicles and licenses.

*Greg Benefiel moved, Ken McGovern seconded, to incorporate the provisions of DUI (KSA 8-1567), such as record checks, to make the penalties match the penalties in New Section 2, and make the crime subject to the special sentencing rules (7-G for a third conviction and no durational or dispositional departure). Motion carried.*

Section 4 covers the implied consent recommendations.

It was recommended to change the advisory found on page 15, (k)(4) by rewording the last part of the sentence to read “. . . drugs, which carries criminal penalties that are equal to or greater than the criminal penalties for the crime of driving under the influence.” It was the consensus of the Commission to change the language.

Mr. Thompson recommended the inclusion of test refusal to (n) on page 17 for consistency. It was the consensus of the Commission to include the language.

Section 5 addresses alcohol and drug evaluations.

Judge Jones questioned the funding issue, particularly, the Alcohol and Drug Safety Action Program (ADSAP) funds going directly to the provider and not to the courts. Despite the fact that the percentage of the fee retained by the court is small, Judge Jones advised it would have a huge impact on her court. She requested her opposition to this proposal be recorded.

*Ed Klumpp moved, Ken McGovern seconded, to include evaluations for violations of commercial DUI and section 2 (test refusal). Motion carried.*

*Doug Wells moved, Jeremy Thomas seconded, on page 23, (d) to include distribution of the alcohol and drug evaluation report to the defense counsel. Motion carried.*

*Judge Ruddick moved, Chris Mechler seconded, to eliminate the required evaluation of fourth DUI. Judge Ruddick amended the motion to eliminate alcohol and drug evaluations for any defendant serving his or her sentence without revocation. The second agreed. Motion carried.*

Section 6 is not drafted yet but will contain the provisions approved by the Commission at the October 28 meeting for preliminary drug testing using a device approved by the Kansas Bureau of Investigation.

Section 7 expands the definition of “alcohol or drug-related conviction” in KSA 8-1013 to include the language used in New Section 2 on prior convictions.

Section 8 addresses the administrative penalties for test refusals, failures, or convictions.

Page 35, (2) contains new language recommended so the Kansas Department of Corrections (KDOC) notifies the Division of Motor Vehicles (DMV) of the date of release. It was recommended to add “with the KDOC” following incarceration. Marcy Ralston requested the language be changed to read the “notification shall be in a format approved by the Division of Motor Vehicles.” The changes were approved by consensus.

Ed Klumpp requested clarifying language to define “end of sentence.” It also was requested that the language reflect credit for any period of suspension or restriction that occurs

before incarceration. The revisor was instructed to include the corrected language so that the period of suspension or restriction is stayed during incarceration with KDOC and credit is given for any period of suspension or restriction before incarceration.

Following further discussion, it was agreed to delete section (d) on page 33, which required the Division to suspend the person's driving privileges whenever the Division is notified by an ADSAP that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by the court.

Section 9 contains details on driving privileges, suspensions, and revocations.

*Ed Klumpp moved, Representative Pauls seconded, on page 36, in subsection (a)(1), to remove "and court or court-ordered supervision" on second and subsequent convictions to comply with federal law. Motion carried.*

Representative Kinzer requested clarifying language in (a)(2), addressing reasons for denial of restricted licenses. There was consensus agreement for the revisor to work with the DMV on appropriate language to clarify the presumption that a restricted license is to be approved unless the person is otherwise not eligible.

Following discussion, there was consensus agreement to remove subsection (e)(2) on page 38 and place it somewhere with the language on ignition interlock affidavit with the notice from ignition interlock providers.

Section 10 contains the rules and regulations regarding ignition interlock devices. The Commission changed the word "indigent" to "all" on page 40, (a)(4) of the bill draft. Therefore, all persons, not just indigent persons, are required to be informed that each manufacturer provides a credit of at least 2 percent of the gross program revenues in the state as a credit for certain individuals who qualify for assistance.

Section 11 covers rules and regulations on ignition interlock violations.

Following discussion, there was consensus to make clear that the penalties in subsection (c) only apply to violations of (a)(1) (tampering with an ignition interlock device for the purpose of circumventing it or rendering it inaccurate or inoperative) or (a)(2) (requesting or soliciting another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device).

Section 12 addresses administrative hearings.

*Representative Pauls moved, Greg Benefiel seconded, to set a flat fee of \$50 for driver's license hearings, the funds going to the Division of Motor Vehicles Operating Fund. There would be no differentiation between an in-person or telephone hearings. Motion carried. Doug Wells voted no and requested his vote be recorded.*

Section 13 covers changes to KSA 8-1567, driving under the influence. The Chairperson distributed a chart provided by Ed Klumpp. (Attachment 2)

*Greg Benefiel moved, Mary Ann Khoury seconded, to change first time convictions from a class B, nonperson misdemeanor to a class A, nonperson misdemeanor. Motion carried. Doug Wells voted no and requested his vote be recorded.*

Ed Klumpp moved, Ken McGovern seconded, on page 44 (c)(2), to change the last sentence by inserting "unless otherwise ordered by the court." Motion carried.

Doug Wells moved, Ken McGovern seconded, on page 45, subsection (e)(2), to allow house arrest after the mandatory ten consecutive days' imprisonment for third time felony DUI convictions. Motion carried.

Mary Ann Khoury moved on page 51, subsection (k), that impoundment and immobilization be retained, and remove the ignition interlock option. Motion died for lack of a second.

Judge Ruddick moved, Doug Wells seconded, on page 51, subsection (k) to change the word "shall" to "may," thereby, making impoundment or immobilization discretionary with the court. The motion also included a provision regarding hardship exemptions. Motion carried.

Ed Klumpp moved, Pete Bodyk seconded, that upon referral from a municipality, the county or district attorney shall make a disposition and shall not be allowed to re-refer a case back to the municipality. Motion carried.

Greg Benefiel moved, C. W. Klebe seconded, to require a prosecuting attorney to make the initial count determination on filing DUI in municipal court, rather than allowing the process to be initiated by filing the citation or ticket. Motion failed.

Section 14 relates to municipal court jurisdiction.

Section 15 addressed the municipal judge powers and duties with a revision addressing procedures in DUI cases to ensure proper and timely reporting.

Ed Klumpp moved, Pete Bodyk seconded, on page 62, (f), remove "electronically" and add a compliance date of July 1, 2012, for electronic reporting. Motion carried.

Ed Klumpp moved, Greg Benefiel seconded, in order for local municipalities to prosecute DUI cases, local law enforcement must report DUI arrests as required by statute. Motion carried. Doug Wells voted no and requested his vote be recorded.

Representative Kinzer moved, Mary Ann Khoury seconded, to make the courts responsible for reporting DUI case filings to the KBI. Representative Kinzer amended his motion to include the same language regarding electronic reporting and a compliance date of July 1, 2012. Motion carried. Doug Wells voted no and requested his vote be recorded.

The Chairperson thanked the Commission and staff for the work done and indicated his intention of requesting an additional day to finish review of the draft bill. December 13, 2010, is the anticipated meeting date, if approved.

The meeting adjourned at 5:05 p.m.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Committee on:

December 13, 2010

(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: 11-15-10

NAME	REPRESENTING
Kevin Benore	The Cly LLC - <del>KHLC</del>
Matt Casey	GSA
SEAN MURPHY	CAPITAL STRATEGIES
Patrick Vogelshleg	Kearney
Ted Sam	KDOR
Sarah Hansen	KAAP
DARIN DEANWISD	RHP
Aaron Gunderson	Vanguard offender Mgmt.
Scott Bayles	The Change Companies

## MEMORANDUM

To: Chairman Owens and Members of the DUI Commission  
From: Jason Thompson, Senior Assistant Revisor  
Date: November 15, 2010  
Subject: DUI Commission Bill Draft #3

**New Section 1.** No automatic professional license consequence solely because of a first DUI conviction or diversion.

**New Sec. 2.** Creating the crime of "refusing to submit to a test to determine the presence of alcohol or drugs."

**Sec. 3.** K.S.A. 8-2,144, commercial motor vehicle DUI. Changes in subsections (a)(2) and (g).

**Sec. 4.** K.S.A. 8-1001, implied consent. Changes in subsections (i) and (k).

**Sec. 5.** K.S.A. 8-1008, alcohol and drug evaluations. Changes throughout.

**Sec. 6.** K.S.A. 8-1012, preliminary testing. Not drafted yet, requested change is to add provisions for preliminary drug test using device approved by KBI.

**Sec. 7.** K.S.A. 8-1013, definitions for article 10 of chapter 8. Changes in subsections (b) and (k).

**Sec. 8.** K.S.A. 8-1014, administrative penalties for test refusal, test failure or conviction. Changes throughout.

**Sec. 9.** K.S.A. 8-1015, details on driving privilege suspension and revocation. Changes throughout.

**Sec. 10.** K.S.A. 8-1016, rules and regulations on ignition interlock devices. Changes throughout, primarily shifting authority from division to KDHE.

**Sec. 11.** K.S.A. 8-1017, ignition interlock violations. Changes to penalties in subsection (c).

**Sec. 12.** K.S.A. 8-1020, administrative hearings. Not drafted yet, requested change is to add authority for division to set a fee for hearings.

**Sec. 13.** K.S.A. 8-1567, driving under the influence. Changes throughout.

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**Sec. 14.** K.S.A. 12-4104, municipal court jurisdiction. Change eliminates concurrent jurisdiction over felony DUI violations.

**Sec. 15.** K.S.A. 12-4106, municipal judge powers and duties. Subsection (f) revised to ensure certain procedures in DUI cases.

**Sec. 16.** K.S.A. 12-4516, expungement, municipal offenses. Ten year rule for expungement of violation of a city DUI ordinance, current law allows no expungement.

**Sec. 17.** K.S.A. 22-2802, release prior to trial. Not drafted yet, requested change is to add special bond conditions for DUI.

**Sec. 18.** K.S.A. 22-3610, appeals from municipal court. New subsection (c) to allow amendment of complaint in district court

**Sec. 19.** K.S.A. 22-3717, parole or postrelease supervision. New subsection (d)(1)(H) to require 2 years postrelease supervision for 4<sup>th</sup> time DUI.

**Sec. 20.** Section 14 of chapter 136 of the 2010 Session Laws, culpability, strict liability crimes. Adds new crime of test refusal to allow guilt without culpable mental state (strict liability).

**Sec. 21.** Section 48 of chapter 136 of the 2010 Session Laws, battery. Subsection (g) creates new crime of aggravated battery while DUI.

**Sec. 22.** Section 254 of chapter 136 of the 2010 Session Laws, expungement. Ten year rule for expungement of DUIs, current law allows no expungement.

**Sec. 23.** Section 285 of chapter 136 of the 2010 Session Laws, non-drug sentencing grid. Special rule in subsection (i)(4) to retain jurisdiction in 3<sup>rd</sup> DUI cases. New subsection (s), special sentencing rule for 3<sup>rd</sup> and subsequent test refusal conviction. New subsection (t), special sentencing rule for 4<sup>th</sup> and subsequent DUI.

**Sec. 24.** Section 292 of chapter 136 of the 2010 Session Laws, criminal history classification. Update for provision on involuntary manslaughter while DUI and new provision for aggravated battery DUI.

**Sec. 25.** Section 299 of chapter 136 of the 2010 Session Laws, departure sentences. Prohibits dispositional or durational departure on 3<sup>rd</sup> and subsequent test refusal conviction or 4<sup>th</sup> and subsequent DUI conviction.



DUI COMMISSION DRAFT #3 - 11/15/10

**New Section 1.** (a) Notwithstanding any other provision of law, no professional licensing body shall suspend, restrict, deny, terminate, or fail to renew the professional license of a licensee solely because such licensee has:

(1) Been convicted of a first violation of K.S.A. 8-1567, and amendments thereto, or an ordinance of a city in this state or law of another state, which ordinance or law prohibits the acts prohibited by that statute; or

(2) entered into a diversion agreement in lieu of further criminal proceedings, or pleaded guilty or *nolo contendere*, on a complaint, indictment, information, citation or notice to appear alleging a first violation of K.S.A. 8-1567, and amendments thereto, or an ordinance of a city in this state or law of another state, which ordinance or law prohibits the acts prohibited by that statute.

(b) If requested by the licensee, the professional licensing body shall conduct a due process hearing **<, in accordance with the Kansas administrative procedure act, ?>** to determine how the violation described in subsection (a) will affect the licensee's professional license. After such hearing, the licensing body may take any action authorized by law, including, but not limited to, alternative corrective measures in lieu of suspension, restriction, denial, termination, or failure to renew the professional license of the licensee.

(c) Nothing in this section shall be construed to limit the authority of the division of vehicles of the department of revenue to restrict, revoke, suspend or deny a driver's license or commercial driver's license.

(d) As used in this section:

(1) "Licensee" means an individual who is or may be authorized to practice a profession in this state; and

(2) "professional licensing body" means an official, agency, board or other entity of the state which authorizes individuals to practice a profession in this state and issues a license, certificate, permit or other authorization to an individual so authorized.

**New Sec. 2.** (a) Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under subsection (a) of K.S.A. 8-1001, and amendments thereto.

(b) Refusing to submit to a test to determine the presence of alcohol or drugs is:

(1) Upon a first conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$2,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(2) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 180 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted must serve at least ten consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released.

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(A) The ten days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 96 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(B) The ten days' imprisonment mandated by this subsection may be served by completing 10 days under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, only after such person has served 96 consecutive hours' imprisonment.

(3) On the third or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 7, nonperson felony.

(c) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(d) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(e) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division,

upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(f) (1) Except as provided further, nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

(2) Notwithstanding any other law to the contrary, no city shall enact an ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof unless the municipal court in such city: Utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission; utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services; utilizes the results of such assessment and such evaluation in determining disposition of the case; has the capability to supervise the offender accordingly; and reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

(g) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the

motor vehicle laws of this state.

(2) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(3) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

(h) (1) Except as provided further, no plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section, or by the ordinance or resolution.

(2) For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(3) The provisions of this subsection shall not apply to a plea bargaining agreement entered into for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by such section.

(i) For the purpose of this section:

\_\_\_\_\_ (1) Only convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, occurring on or after July 1, 1996, shall be taken into account when determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section. Nothing in this provision shall be construed as preventing any court from considering any convictions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender in sentencing under this section: (A) this section, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (i)(1) or (i)(2); (B) conviction of a violation of a law of another state, or an ordinance of a city in this state, or a resolution of a county in this state, which would constitute a crime described in subsection (i)(1) or (i)(2); and (C) receiving punishment under

the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (i) (1) or (i) (2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, only once during the person's lifetime.

**Sec. 3. K.S.A. 2010 Supp. 8-2,144 is hereby amended to read as follows:** 8-2,144. (a) No person shall drive any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this state while:

(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within [~~two~~] three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of subsection (a) of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited thereunder.

(b) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive

hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(c) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(d) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person



convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court also requires as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(e) The court shall report every conviction of a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state.

(f) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto.

(g) For the purpose of this section 7:

(1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(2) only convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or

resolution of any county which prohibits the acts that such section prohibits, occurring on or after July 1, 1996, shall be taken into account when determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section. Nothing in this provision shall be construed as preventing any court from considering any convictions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(3) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender in sentencing under this section: (A) this section, and amendments thereto; (B) section 2, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(4) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (g)(2) or (g)(3); (B) conviction of a violation of a law of another state, or an ordinance of a city in this state, or a resolution of a county in this state, which would constitute a crime described in subsection (g)(2) or (g)(3); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation

and which would constitute a crime described in subsection (g) (2) or (g) (3) if committed off a military reservation in this state;

(5) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

**Sec. 4. K.S.A. 2010 Supp. 8-1001 is hereby amended to read as follows:** 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a): (1) If the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or

other drugs in such person's system, in violation of a state statute or a city ordinance; or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or (4) a phlebotomist.

(d) A law enforcement officer may direct a medical professional described in this section to draw a sample of blood

from a person:

(1) If the person has given consent and meets the requirements of subsection (b);

(2) if medically unable to consent, if the person meets the requirements of paragraph (2) of subsection (b); or

(3) if the person refuses to submit to and complete a test, if the person meets the requirements of paragraph (2) of subsection (b).

(e) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(f) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(g) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible

for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(h) A law enforcement officer may request a urine sample upon meeting the requirements of paragraph (1) of subsection (b) and shall request a urine sample upon meeting the requirements of paragraph (2) of subsection (b).

(i) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by ~~[persons of the same sex as the person being tested and]~~: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (d) and (e) shall apply to the collection of a urine sample.

(j) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(k) Before a test or tests are administered under this section, the person shall be given oral and written notice that:

(1) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(2) the opportunity to consent to or refuse a test is not a constitutional right;

(3) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person may be charged with a separate crime of refusing to submit to a test to determine the presence of alcohol or drugs, which carries penalties that are greater than the penalties for the crime of driving under the influence;

**<change penalties below to match the final decisions made on 8-1014 suspension periods>**

~~[(4)]~~ (5) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

~~[(5)]~~ (6) if the person submits to and completes the test or tests and the test results show for the first occurrence:

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence; or

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year;

~~[(7)]~~ (7) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

~~[(8)]~~ (8) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year except the person's driving privileges will be permanently revoked for a fifth or subsequent occurrence;

~~[(9)]~~ (9) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

~~[(10)]~~ (10) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

~~[(11)]~~ (11) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(1) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to



give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(m) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(n) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(o) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol

concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(p) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to a person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(q) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(r) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(s) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(t) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(u) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(v) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

(w) As used in this section, "serious injury" means a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:

(1) Disabling a person from the physical capacity to remove themselves from the scene;

(2) renders a person unconscious;

(3) the immediate loss of or absence of the normal use of at least one limb;

(4) an injury determined by a physician to require surgery;  
or

(5) otherwise indicates the person may die or be permanently disabled by the injury.

**Sec. 5. K.S.A. 8-1008 is hereby amended to read as follows:**

8-1008. (a) [~~Community-based alcohol and drug safety action programs certified~~] SRS licensed providers with a DUI specialty licensed in accordance with subsection (b) shall provide:

(1) [~~Presentence~~] Alcohol and drug evaluations, prior to sentencing, of any person who is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute; or

~~[(2) supervision and monitoring of all persons who are convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section,]~~

~~[(3)]~~ (2) alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments

thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute[7].

~~[-(4) supervision and monitoring of persons required, under a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section; or~~

~~-(5) any combination of (1), (2), (3) and (4).~~

(b) ~~[The presentence]~~ Prior to sentencing, the alcohol and drug evaluation shall be conducted by [a community-based alcohol and drug safety action program certified] an SRS licensed provider with a DUI specialty licensed in accordance with the provisions of this subsection to provide evaluation ~~[and supervision]~~ services as described in subsections (c) and (d). ~~[A community-based alcohol and drug safety action program shall be certified either by the chief judge of the judicial district to be served by the program or by the]~~ An SRS licensed provider with a DUI specialty shall be licensed by the secretary of social and rehabilitation services ~~[for judicial districts in which the chief judge declines to certify a program. In addition to any qualifications established by the secretary, the chief judge may establish qualifications for the certification of programs, which qualifications may include requirements for training, education and certification of personnel; supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. In establishing the qualifications for programs, the chief judge or the secretary shall give preference to those~~

~~programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the chief judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If within 60 days after the effective date of this act the chief judge declines to certify any program for the judicial district, the judge shall notify the secretary of social and rehabilitation services, and the secretary of social and rehabilitation services shall certify a community-based alcohol and drug safety action program for that judicial district. The certification shall be for a four-year period. Recertification of a program or certification of a different program shall be by the chief judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If upon expiration of certification of a program there will be no certified program for the district and the chief judge declines to recertify or certify any program in the district, the judge shall notify the secretary of social and rehabilitation services, at least six months prior to the expiration of certification, that the judge declines to recertify or certify a program under this subsection. Upon receipt of the notice and prior to the expiration of certification, the secretary shall recertify or certify a community-based alcohol and drug safety action program for the judicial district for the next four-year period. To be eligible for [certification] licensure under this subsection, [the chief judge or] the secretary of social and rehabilitation services shall determine that [a community-based alcohol and drug safety action program] an SRS licensed provider with a DUI specialty meets the qualifications established by the [judge or] secretary and is~~

capable of providing~~[, within the judicial district]~~: (1) The evaluations~~[, supervision and monitoring]~~ required under subsection (a); (2) the alcohol and drug evaluation report required under subsection (c) or (d); (3) the follow-up duties specified under subsection (c) or (d) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. Each judicial district shall be provided with a list of SRS licensed providers with a DUI specialty licensed in accordance with this subsection, and such list shall be used when selecting an SRS licensed provider with a DUI specialty to be used as described in subsections (c) and (d). ~~[Community-based alcohol and drug safety action programs]~~ SRS licensed providers with a DUI specialty performing services in any judicial district under this section prior to the effective date of this act may continue to perform those services until [a community-based alcohol and drug safety action program is certified for that judicial district] January 1, 2012.

(c) ~~[A presentence]~~ Prior to sentencing, an alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The ~~[presentence]~~ alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. The ~~[presentence]~~ alcohol and drug evaluation report shall ~~[contain a history of the defendant's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the defendant to education and rehabilitation. The presentence alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the defendant. The presentence alcohol and drug evaluation report shall be prepared by a program~~

~~which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the presentence alcohol and drug evaluation report may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring defendants in the treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation]~~ meet the standards of assessment as set forth by the secretary of social and rehabilitation services. The cost of any alcohol and drug evaluation ~~[education, rehabilitation and treatment programs]~~ for any person shall be paid by such person~~[7 and such costs shall include, but not be limited to, the assessments required by subsection (e). If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence]~~ to the provider at the time of service, and shall not exceed \$150.

(d) An alcohol and drug evaluation shall be conducted on any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The alcohol and drug evaluation report shall be made available to the prosecuting attorney and shall be considered by the prosecuting attorney. The alcohol and drug evaluation report shall ~~[contain a history of the person's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the person to education and rehabilitation. The alcohol and drug evaluation~~

~~report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the person. The alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the alcohol and drug evaluation report may also include monitoring persons in the treatment programs, notifying the prosecutor and the court of any person failing to meet the conditions of diversion or referrals to treatment, and providing assistance and data reporting and program evaluation]~~ meet the standards of assessment as set forth by the secretary of social and rehabilitation services. The cost of any alcohol and drug evaluation [education, rehabilitation and treatment programs] for any person shall be paid by such person[, and such costs shall include, but not be limited to, the assessments required by subsection (e)] to the provider at the time of service, and shall not exceed \$150.

(e) DUI evaluations and recommendations made by an SRS licensed provider with a DUI specialty shall be accepted in any jurisdiction.

~~[(e)]~~ (f) In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, a fee not to exceed \$150 shall be assessed against the person by the sentencing court or under the diversion agreement. ~~[The \$150 assessment may be waived by the court, in whole or in part, or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent~~



~~person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit, during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section. The district or municipal judge having administrative authority over that court shall compile a report and send such report to the office of the state judicial administrator on or before January 20 of each year, beginning January 20, 1991. Such report shall include, but not be limited to:~~

- ~~—— (1) The balance of the alcohol and drug safety action fund of the court on December 31 of each year;~~
- ~~—— (2) the assessments deposited into the fund during the 12-month period ending the preceding December 31; and~~
- ~~—— (3) the dollar amounts expended from the fund during the~~

~~12-month period ending the preceding December 31.~~

~~The office of the state judicial administrator shall compile such reports into a statewide report and submit such statewide report to the legislature on or before March 1 of each year.~~

~~(f) The secretary of social and rehabilitation services shall remit all moneys received by the secretary under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the certification of community-based alcohol and drug safety action programs fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants issued pursuant to vouchers approved by the secretary of social and rehabilitation services or a person designated by the secretary.]~~

**Sec. 6. K.S.A. 2010 Supp. 8-1012 is hereby amended to read as follows: 8-1012.**

<add provisions for preliminary drug test using device approved by KBI>

**Sec. 7. K.S.A. 2010 Supp. 8-1013 is hereby amended to read as follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:**

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) (1) "Alcohol or drug-related conviction" means conviction of any of the following: [~~(A) Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a~~

~~county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b) (1) (A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b) (1) (A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b) (1) (A) if committed off a military reservation in this state.]~~

~~[(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b) (1), including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.]~~ (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (G) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto.

(2) "Alcohol or drug-related conviction" also means: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (b) (1); (B) conviction of a violation of a law of another state, or an ordinance of a city in this state, or a resolution of a county in this state, which would constitute a crime described in subsection (b) (1); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (b) (1) if committed off a military reservation in this state.

(3) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(c) "Division" means the division of vehicles of the department of revenue.

(d) "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective day of this act.

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken [~~two~~ three] hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) "Samples" includes breath supplied directly for testing, which breath is not preserved.

(h) "Test failure" or "fails a test" refers to a person's having results of a test administered pursuant to this act, other

than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.

(i) "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) "Law enforcement officer" has the meaning provided by K.S.A. 21-3110, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

(k) "Department" means the Kansas department of health and environment.

**Sec. 8. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as follows:** 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(2) on the person's second occurrence, suspend the person's driving privileges for [~~two years~~] one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(3) on the person's third occurrence, suspend the person's driving privileges for [~~three years~~] one year, not including any

period of incarceration, and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;

(4) on the person's fourth occurrence, suspend the person's driving privileges for [~~10 years~~] one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(5) on the person's fifth or subsequent occurrence, revoke the person's driving privileges permanently.

(b) (1) Except as provided by subsections (b) (2), (c) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(A) On the person's first occurrence, suspend the person's driving privileges for 30 days, not including any period of incarceration, then restrict the person's driving privileges as provided by subsection (b) of K.S.A. 8-1015, and amendments thereto, for an additional [~~330 days~~] one year;

(B) on the person's second[~~, third or fourth~~] occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device; [~~and~~]

(C) on the person's third occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device; and

~~[(C)]~~ (E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

(2) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state and the person's blood or breath alcohol concentration is .15 or greater, the division shall:

(A) On the person's first occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(B) on the person's second occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(C) on the person's third occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year, not including any period of incarceration, and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

~~[(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.]~~

~~(4) Whenever a person's driving privileges have been suspended for one year on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b) (1), after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of restriction as provided in subsection (b) (1).]~~

(c) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year, not including any period of incarceration. If the person's blood or breath alcohol concentration is .15 or greater, the division shall at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition



interlock device;

(2) on the person's second and subsequent occurrences, penalties shall be imposed pursuant to subsection (b).

(d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program. **<NOTE: May need changes>**

(e) (1) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a), (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

(2) If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.

(f) If the division has taken action under subsection (a) for a test refusal or under subsection (b) or (c) for a test

failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to K.S.A. 8-1020, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) or (c) for an alcohol or drug-related conviction.

~~[(g) Upon restricting a person's driving privileges pursuant to this section, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.]~~

~~[(h) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year period on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b) (1).]~~

(g) The provisions of subsection (a), (b) and (c) of this section, as amended by this act, may be applied retroactively only if requested by a person who has had such person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of this section prior to such amendment. Such person may apply to the division to have the penalties applied retroactively, as provided under subsection (h) of K.S.A. 8-1015, and amendments thereto.

(h) (1) If a person's driving privileges are suspended or restricted pursuant to this section and such person is

incarcerated for an alcohol or drug-related conviction, the suspension or restriction shall commence upon such person's release from incarceration. For the purpose of calculating the period of suspension or restriction under this section, the date of release from incarceration shall be deemed the date the suspension or restriction period commenced.

(2) The secretary of corrections shall notify the division of the date when incarceration begins and the date of release from incarceration for any person incarcerated for an alcohol or drug-related conviction. The notification shall be on a form approved by the division.

**Sec. 9. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as follows:** 8-1015. [~~(a) When subsection (b) (1) of K.S.A. 8-1014, and amendments thereto, requires or authorizes the division to place restrictions on a person's driving privileges, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a) (1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto.~~

~~(b) In lieu of the restrictions set out in subsection (a), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense. Prior to issuing such restricted license, the division shall receive proof of the installation of such device.]~~

(a) (1) Whenever a person's driving privileges have been suspended for one year as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle

equipped with an ignition interlock and only for the purposes of getting to and from: work, school or an alcohol treatment program; the ignition interlock provider for maintenance and downloading of data from the device; and court or court-ordered supervision.

(2) The division shall notify the person of the decision to approve or deny the request for such restricted license and the reasons for such decision. If the request is approved, upon receipt of proof of the installation of such device, the division shall issue a copy of the order imposing such restrictions on the person's driving privileges and such order shall be carried by the person at any time the person is operating a motor vehicle on the highways of this state. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto.

(b) When a person has completed the suspension pursuant to subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from: work, school or an alcohol treatment program; the ignition interlock provider for maintenance and downloading of data from the device; and court or court-ordered supervision. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto.

(c) (1) Any person whose driving privileges have been restricted as provided in subsection (a) or (b) shall carry

documentation, as provided in rules and regulations promulgated by the division, of scheduled events the person is allowed to drive to and from under such restrictions at any time the person is operating a motor vehicle on the highways of this state. The division shall promulgate such rules and regulations on or before July 1, 2012.

(2) Whenever a law enforcement officer stops any person operating a motor vehicle on the highways of this state whose driving privileges have been restricted as provided in subsection (a) or (b) and the person is not carrying the documentation described in this subsection, there shall be a rebuttable presumption that the person is operating a motor vehicle on the highways of this state in violation of such restrictions.

~~[(c)]~~ (d) Except as provided in subsection (b), when a person has completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device [approved by the division and maintained at the person's expense. Proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated]. Upon restricting a person's driving privileges pursuant to this subsection, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.

(e) (1) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the department of health and environment and maintained at the person's expense. Proof of the installation of such ignition

interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated.

(2) Whenever an ignition interlock device is required by law, the person required to have such ignition interlock device shall sign an affidavit, in a form approved by the division, acknowledging that:

(A) Operation of any vehicle that is not equipped with an ignition interlock device may subject the person to criminal and civil penalties;

(B) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the person to further civil penalties;

(C) the ignition interlock device shall be maintained at the person's expense, up-to-date records shall be kept in the vehicle showing required service and calibrations and such records shall be provided upon request.

(f) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year suspension period as provided in subsection (a).

~~(d)~~ (g) Upon expiration of the period of time for which restrictions are imposed pursuant to this section, the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper

fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

(h) Any person who has had the person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014 prior to the amendments by this act, may apply to the division to have the suspension and restriction penalties modified in conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto. The division shall assess an application fee of \$59 for a person to apply to modify the suspension and restriction penalties previously issued. The division shall remit all application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund. The application fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such application. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. The division shall modify the suspension and restriction penalties, unless such person's driving privileges have been suspended or revoked pursuant to another action by the division or a court.

**Sec. 10. K.S.A. 8-1016 is hereby amended to read as follows:**  
8-1016. (a) The secretary of [~~revenue~~ may] health and environment shall adopt rules and regulations for:

(1) The approval by the [~~division~~] department of models and classes of ignition interlock devices suitable for use by persons whose driving privileges have been restricted to driving a vehicle equipped with such a device. Such rules and regulations shall require that any ignition interlock device approved by the

department shall be capable of capturing a photographic image of the person using the device;

(2) the calibration and maintenance of such devices, which shall be the responsibility of the manufacturer. Such rules and regulations shall require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include, but not be limited to, physical inspection of the device, the vehicle and wiring of the device to the vehicle for signs of tampering, calibration of the device and downloading of all data contained within the device's memory and reporting of any violation or noncompliance to the division; [and]

(3) ensuring that each manufacturer approved provides a reasonable statewide service network where such devices may be obtained, repaired, replaced or serviced and such service network can be accessed 24 hours per day through a toll-free phone service[-]; and

(4) requiring that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program. Such rules and regulations shall require that the manufacturer or the manufacturer's representatives inform indigent persons of this credit and how to qualify for assistance in obtaining an ignition interlock device.

~~[In adopting rules and regulations for approval of ignition interlock devices under this section, the secretary of revenue shall require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include but not be limited to physical inspection of the device, the~~



~~vehicle and wiring of the device to the vehicle for signs of tampering, calibration of the device and downloading of all data contained within the device's memory and reporting of any violation or noncompliance to the division.]~~

~~[(4)]~~ (b) The division shall adopt by rules and regulations participant requirements for proper use and maintenance of a certified ignition interlock device during any time period the person's license is restricted by the division to only operating a motor vehicle with an ignition interlock device installed and by rules and regulations the reporting requirements of the approved manufacturer to the division relating to the person's proper use and maintenance of a certified ignition interlock device.

~~[(5) The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program.]~~

~~[(b)]~~ (c) If the ~~[division]~~ department approves an ignition interlock device in accordance with rules and regulations adopted under this section, the ~~[division]~~ department shall give written notice of the approval to the manufacturer of the device. Such notice shall be admissible in any civil or criminal proceeding in this state.

~~[(c)]~~ (d) The manufacturer of an ignition interlock device shall reimburse the ~~[division]~~ department for any cost incurred in approving or disapproving such device under this section.

~~[(d)]~~ (e) Neither the state nor any agency, officer or employee thereof shall be liable in any civil or criminal proceeding arising out of the use of an ignition interlock device approved under this section.

(f) All rules and regulations, orders and directives of the secretary of revenue that relate to this section, and that are in effect on July 1, 2011, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of health and environment until revised, amended, revoked or nullified pursuant to law.

**Sec. 11. K.S.A. 8-1017 is hereby amended to read as follows:**

8-1017. (a) No person shall:

(1) Tamper with an ignition interlock device for the purpose of circumventing it or rendering it inaccurate or inoperative;

(2) request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;

(3) blow into or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or

(4) operate a vehicle not equipped with an ignition interlock device during the restricted period.

(b) Violation of this section is a class A, nonperson misdemeanor.

(c) In addition to any other penalties provided by law~~[, upon receipt of a conviction for a violation of this section, the division shall suspend the person's driving privileges for a period of two years.]~~:

(1) Upon a first conviction of a violation of this section, the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days; and

(2) upon a second or subsequent conviction of a violation of this section, the division shall restart the original ignition interlock restriction period on the person's driving privileges.

**Sec. 12. K.S.A. 2010 Supp. 8-1020 is hereby amended to read as follows: 8-1020.**

**<Add authority for division to set a fee for hearings>**

**Sec. 13. K.S.A. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 8-1567. (a) ~~[No person shall operate or attempt]~~ Driving under the influence is operating or attempting to operate any vehicle within this state while:**

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within ~~[two]~~ three hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; ~~[or]~~

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle~~[or]~~; or

~~[(b) No person shall operate or attempt to operate any vehicle within this state if]~~ (6) the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

~~[(c)]~~ (b) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not

constitute a defense against the charge.

~~[(d)]~~ (c) (1) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than ~~[48 consecutive hours]~~ 30 days nor more than six months' imprisonment ~~[, or in the court's discretion 100 hours of public service,]~~ and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(2) In addition, the court shall enter an order which requires ~~[that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program]~~ the person to participate in an alcohol and drug evaluation conducted by an SRS licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto ~~[, or both the education and treatment programs]~~. The person shall be required to follow any recommendation made by the provider after such an evaluation.

~~[(e)]~~ (d) (1) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released.

(A) The five days' imprisonment mandated by this subsection may be served by completing six days in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the

work release program.

(B) [The court may place the person convicted] The five days' imprisonment mandated by this subsection may be served by completing 10 days under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, [to serve the remainder of the minimum sentence] only after such person has served 48 consecutive hours' imprisonment.

(2) As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to [enter into and complete a treatment program for alcohol and drug abuse] participate in an alcohol and drug evaluation conducted by an SRS licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such an evaluation.

[+f)] (e) (1) Except as provided further, on the third conviction of a violation of this section, a person who, within the preceding 10 years, not including any period of incarceration, has not been convicted of a violation of this section, shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment.

(A) The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 10 consecutive days' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(B) The 90 days' imprisonment mandated by this paragraph may be served under a house arrest program pursuant to K.S.A.

21-4603b, and amendments thereto, only after such person has served 10 consecutive days' imprisonment.

(C) The 90 days' imprisonment mandated by this paragraph may be served under <intensive supervised probation and an alcohol monitoring program> only after such person has served 10 consecutive days' imprisonment.

[~~(1)~~] (2) On the third conviction of a violation of this section, a person who, within the preceding 10 years, not including any period of incarceration, has been convicted of a violation of this section, shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served [~~72 consecutive hours~~] 10 consecutive days' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

[~~(2)~~] (3) The court may order that the term of imprisonment imposed pursuant to paragraph (1) or (2) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for

execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient

program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

~~[(g)(1)]~~ (f) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a ~~[nonperson felony and sentenced to not less than 180 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 180 days' imprisonment. The 180 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 144 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program]~~ severity level 7, nonperson felony.

~~[(2)]~~ The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for



~~execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.~~

~~At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary.]~~

~~(h)~~ (g) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This

imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

~~[(i)]~~ (h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~[(j)]~~ (i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~[(k)]~~ (j) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

[~~(i)~~] (k) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or [~~leased~~] operated, or both, by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall

pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

(2) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

~~[(m)]~~ (l) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~[(m)]~~ (m) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

~~[(o)] For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in~~

~~sentencing under this section:~~

~~———— (1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;~~

~~———— (2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;~~

~~———— (3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;~~

~~———— (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and~~

~~———— (5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.]~~

[~~(p)~~] (n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

[~~(q)~~] (o) (1) (A) Except as provided in subsections (p) and (g), nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful

by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

~~(B) [On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.~~

~~——(C)]~~ Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a

violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) (1) Notwithstanding any other law to the contrary, no city shall enact an ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof unless the municipal court in such city: Utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission; utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services; utilizes the results of such assessment and such evaluation in determining disposition of the case; has the capability to supervise the offender accordingly; and reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

(2) On and after July 1, 2011, any city ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof is hereby declared null and void, regardless of when such ordinance was enacted, unless the municipal court in such city meets the requirements specified in this subsection.

(q) Notwithstanding any other law to the contrary, the district court shall have exclusive jurisdiction over violations of subsection (e) of this section committed on or after July 1, 2011. No city shall enact an ordinance granting a municipal court jurisdiction over violations of subsection (e) which is concurrent with the jurisdiction of the district court over violations of subsection (e). On and after July 1, 2011, any part of any city ordinance in conflict with this subsection is hereby declared null and void, regardless of when such ordinance was enacted.

(r) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(3) If the elements of such ordinance violation are the same as the elements of a violation of this section that would



constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

(s) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(t) The alternatives set out in subsections (a) (1), (a) (2) and (a) (3) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, [~~may~~] elect one or two of the three prior to submission of the case to the fact finder.

(u) Upon a third or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

~~[(v) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.~~

~~(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been~~

~~approved by the board of county commissioners or the governing body of a city.~~

~~(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.]~~

~~(w)~~ (v) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

~~(w)~~ (w) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such presentence evaluation shall be made available, and shall be considered by the sentencing court.

(x) For the purpose of this section:

(1) Only convictions for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, occurring on or after July 1, 1996, shall be taken into account when determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section. Nothing in this provision shall be construed as preventing any court from considering any convictions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender in sentencing under this section: (A) section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (x) (1) or (x) (2); (B) conviction of a violation of a law of another state, or an ordinance of a city in this state, or a resolution of a county in this state, which would constitute a crime described in subsection (x) (1) or (x) (2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (x) (1) or (x) (2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense;

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, only once during the person's lifetime;

(6) "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(7) "imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(8) "drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

**Sec. 14. K.S.A. 12-4104 is hereby amended to read as follows:** 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

~~[(1) K.S.A. 8-1567, and amendments thereto, driving under the influence;]~~

~~[(2)]~~ (1) K.S.A. 21-3412a, and amendments thereto, domestic battery;

~~[(3)]~~ (2) K.S.A. 21-3701, and amendments thereto, theft;

~~[(4)]~~ (3) K.S.A. 21-3707, and amendments thereto, giving a worthless check; or

~~[(5)]~~ (4) K.S.A. 2009 Supp. 21-36a06, and amendments thereto, possession of marijuana.

(b) Search warrants shall not issue out of a municipal court.

**Sec. 15. K.S.A. 12-4106 is hereby amended to read as follows:** 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments

made by such municipal judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

(f) In all cases alleging a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, the municipal court judge shall ensure that [information concerning persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, is forwarded to the Kansas bureau of investigation central repository.] the municipal court: Utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission; utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services; utilizes the results of such assessment and such evaluation in determining disposition of the case; has the capability to supervise the offender accordingly; and reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

Sec. 16. K.S.A. 2010 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b) [~~or~~], (c) and (d), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b) [~~or~~], (c) and (d), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by [~~K.S.A. 21-3405~~] section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, [~~and amendments thereto~~] prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended

sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

~~[(c)]~~ (d) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. ~~[8-1567 or]~~ 8-2,144, and amendments thereto.

<current law (d) through (i) will appear here>

**Sec. 17. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802.**

**<add special bond conditions for DUI>**

**Sec. 18. K.S.A. 22-3610 is hereby amended to read as follows:** 22-3610. (a) When a case is appealed to the district court, such court shall hear and determine the cause on the original complaint, unless the complaint shall be found defective, in which case the court may order a new complaint to be filed and the case shall proceed as if the original complaint had not been set aside. The case shall be tried de novo in the district court.

(b) Notwithstanding subsection (a), appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 shall be conducted only on the record of the stipulation of facts relating to the complaint.

(c) Notwithstanding subsection (a), if the complaint in the case appealed to the district court is one in which the number of prior convictions is required to be reflected in the charging document and the prosecutor can establish to the district court's satisfaction that the defendant has obtained additional convictions since the complaint was filed in municipal court, the prosecutor shall be allowed to amend the complaint to reflect the proper number of prior convictions.



**Sec. 19. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as follows:** 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amendments thereto; K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b) (1) or (b) (4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on

postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(C) Except as provided in subparagraphs (D) [~~and~~], (E) and (H), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d) (1) (A), (d) (1) (B) or (d) (1) (C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant

to subsection (e) of K.S.A. 21-4714, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d) (1) (D), the court shall refer to K.S.A. 21-4718, and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d) (1) (A), (d) (1) (B) or (d) (1) (C). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of postrelease supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the

supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(H) Notwithstanding any other provision of law, persons sentenced for a violation of subsection (g) of K.S.A. 8-1567, and amendments thereto, must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(2) As used in this section, ``sexually violent crime'' means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a) (2) and (a) (3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section. "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the

new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

<current law (h)-(v) will appear here>

**Sec. 20. Section 14 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

A person may be guilty of a crime without having a culpable mental state if the crime is:

(a) A misdemeanor, cigarette or tobacco infraction or traffic infraction and the statute defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(b) a felony and the statute defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(c) a violation of section 2, and amendments thereto;

~~[(c)]~~ (d) a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto; or

~~[(d)]~~ (e) a violation of K.S.A. 22-4901 et seq., and amendments thereto.

**Sec. 21. Section 48 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

(a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;

(B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement



or death can be inflicted;

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(c) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a) (2), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(2) battery, as defined in subsection (a) (1), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection

(b) (1) (a) committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as defined in subsection

(b) (1) (B) or (b) (1) (C), committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance

of such officer's duty; or

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g) Aggravated battery while driving under the influence is:

(1) with no requirement of a culpable mental state, causing great bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto; or

(2) with no requirement of a culpable mental state, causing bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight

from an act described in K.S.A. 8-1567, and amendments thereto.

~~[(g)]~~ (h) (1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b) (1) (A) is a severity level 4, person felony;

(B) subsection (b) (1) (B) or (b) (1) (C) is a severity level 7, person felony;

(C) subsection (b) (2) (A) is a severity level 5, person felony; and

(D) subsection (b) (2) (B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c) (1) is a class A person misdemeanor;

(B) subsection (c) (2) is a severity level 7, person felony; and

(C) subsection (c) (3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d) (1) or (d) (3) is a severity level 3, person felony; and

(B) subsection (d) (2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(7) Aggravated battery while driving under the influence as defined in:

(A) Subsection (g) (1) is a severity level 5, person felony; and

(B) subsection (g) (2) is a severity level 8, person felony.

~~[(h)]~~ (i) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution;

(3) "juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 2010 Supp. 38-2302, and amendments thereto;

(4) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2010 Supp. 38-2302, and amendments thereto;

(5) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility;

(6) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12; and

(7) "mental health employee" means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

**Sec. 22. Section 254 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

<This is the recodified expungement statute, 21-4619>

(a) (1) Except as provided in subsections (b) [~~and~~], (c) and (d), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b) [~~and~~], (c) and (d), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsection (c) and (d), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or as prohibited by any law of another state which is in

substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

~~(c)~~ (d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(3) criminal sodomy as defined in subsection (a) (3) or (a) (4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(4) aggravated criminal sodomy as defined in section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(6) sexual exploitation of a child as defined in section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) aggravated incest as defined in section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) abuse of a child as defined in section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) capital murder as defined in section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(11) murder in the first degree as defined in section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments



thereto;

(12) murder in the second degree as defined in section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) voluntary manslaughter as defined in section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(14) involuntary manslaughter as defined in section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(15) sexual battery as defined in section ~~69~~ of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

~~[(17) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;]~~

~~[(18)]~~ (17) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

~~[(19)]~~ (18) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

<current law (d)-(i) will appear here>

**Sec. 23. Section 285 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

<This is the recodified sentencing grid statute, 21-4704>

<current law (a)-(h) will appear here>

(i) (1) The sentence for the violation of the felony provision of subsection (f) (2) of K.S.A. 8-1567, subsection (b) (3) of section 49 of chapter 136 of the 2010 Session Laws of

Kansas, subsections (b) (3) and (b) (4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of subsection (f) (2) of K.S.A. 8-1567, subsection (b) (3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b) (3) and (b) (4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for [~~felony~~] violations of subsection (f) (2) of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources

and facility capacity shall not be subject to review.

(4) Notwithstanding the provisions of any other section, the sentencing court shall retain jurisdiction to modify the sentence imposed for the violation of subsection (f) (2) of K.S.A. 8-1567, and amendments thereto.

<current law (j)-(r) will appear here>

(s) The sentence for a violation of subsection (b) (3) of section 2, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. Notwithstanding the provisions of any other section, an offense under subsection (b) (3) of section 2, and amendments thereto, shall be classified in the following grid block, except when, because of the offender's criminal history classification, the offense is classified in a grid block which exceeds the grid block specified:

(1) a 3rd conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-G;

(2) a 4th conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-F;

(3) a 5th conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-E;

(4) a 6th conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-D;

(5) a 7th conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-C;

(6) an 8th conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-B; and

(7) a 9th or subsequent conviction of a violation of section 2, and amendments thereto, shall be classified in grid block 7-A.

(t) The sentence for a violation of subsection (g) of K.S.A. 8-1567, and amendments thereto, shall be presumptive

imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. Notwithstanding the provisions of any other section, an offense under subsection (g) of K.S.A. 8-1567, and amendments thereto, shall be classified in the following grid block, except when, because of the offender's criminal history classification, the offense is classified in a grid block which exceeds the grid block specified:

(1) a 4th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-G;

(2) a 5th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-F;

(3) a 6th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-E;

(4) a 7th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-D;

(5) an 8th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-C;

(6) a 9th conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-B; and

(7) a 10th or subsequent conviction of a violation of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-A.

**Sec. 24. Section 292 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

In addition to the provisions of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be

rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal use of weapons as defined in subsection (a) (8) or (a) (13) of section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or possession of a firearm on the grounds or in the state capitol building as defined in section 194 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and prior to July 1, 2011, and is for a violation of subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of

another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(3) If the current crime of conviction was committed on or after July 1, 2011, and is for a violation of subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one person felony for criminal history purposes: (A) section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (G) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto.

(4) If the current crime of conviction was committed on or after July 1, 2011, and is for a violation of subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one person felony for criminal history purposes: (A) section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) subsection

(g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (G) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a) (1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a) (2) or (a) (3) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military

courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (d) (3) (B), (d) (3) (C), (d) (3) (D) and (d) (4) of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

**\_\_\_\_\_ Sec. 25. Section 299 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:**

(a) When a departure sentence is appropriate, the sentencing judge may depart from the sentencing guidelines as provided in this section.

(1) The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. The sentencing judge shall not impose a downward durational departure sentence for any crime of extreme sexual violence, as defined in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to less than 50% of the center of the range of the sentence for such crime.



(2) The sentencing judge shall not impose a downward dispositional departure sentence or a downward durational departure sentence for a violation of subsection (b)(3) of section 2, and amendments thereto, or a violation of subsection (g) of K.S.A. 8-1567, and amendments thereto.

(b) When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The judge shall consider and apply the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction and the offender's criminal history; and

(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure:

(1) The judge shall consider and apply the primary purpose of the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of section 248 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

## DUI SENTENCING AS PROPOSED BY THE DUI COMMISSION

	Current	Proposed DUI		Proposed Test Refusal
1st Offense	Class B NP Misdemeanor Not less than 48 hours in jail Not more than 6 months in jail Must serve 48 hours in jail or perform 100 hrs public service Fine \$500-1000 Complete Alcohol/Drug Education Program	Class B NP Misdemeanor Not less than 30 days in jail Not more than 6 months in jail Must serve 48 hours in jail or perform 100 hrs public service Fine \$500-1000 Participate in DUI Evaluation Program and follow recommendations.	1st Offense	Class A NP Misdemeanor Not less than 90 days in jail Not more than 1 year in jail Must serve 5 days in jail work release permitted after 48 hours in jail Fine \$500-2500
2nd Offense	Class A NP Misdemeanor Not less than 90 days in jail Not more than 1 year in jail Must serve 5 days in jail Fine \$1000-1500	Class A NP Misdemeanor Not less than 90 days in jail Not more than 1 year in jail Must serve 5 days in jail, or 6 days work release after 48 hrs 10 days house arrest after 48 hrs Fine \$1000-1500	2nd Offense	Class A NP Misdemeanor Not less than 180 days in jail Not more than 1 year in jail Must serve 10 days in jail work release or house arrest permitted after 96 hours Fine \$1000-2500
3rd Offense, no prior DUI within 10 years	NP Unclassified felony Not less than 90 days in jail Not more than 1 year in jail Must serve 90 days in jail, or Work release after 72 hours Fine \$2500	Class A NP Misdemeanor Not less than 90 days in jail Not more than 1 year in jail Must serve 90 days in jail, or work release after 10 days house arrest after 10 days intensive supervised probation and alcohol monitoring after 10 days Fine \$2500	3rd and subsequent Offense	SL7 NP Felony Same special rules as 4th DUI
3rd Offense, prior DUI within 10 years	NP Unclassified felony Not less than 90 days in jail Not more than 1 year in jail Must serve 90 days in jail, or Work release after 72 hours Fine \$2500	NP Unclassified felony Not less than 90 days in jail Not more than 1 year in jail Must serve 90 days in jail, or Work release after 10 days Court retains jurisdiction to modify sentence after treatment Fine \$2500		
4th and subsequent Offense	NP Unclassified felony Not less than 180 days in jail Not more than 1 year in jail Must serve 180 days in jail, or Work release after 144 hours Fine \$2500	SL7 NP Felony with following special rule placement on grid unless offender record places them higher on the grid 4th offense 7G; 5th offense 7F; 6th offense 7E; 7th offense 7D; 8th offense 7C; 9th offense 7B; 10th and subsequent offense 7A 24 months plus good time credit on post release supervised probation		

DUI Commission 2010

11-15-10

Attachment 2

7-2

### DUI SANCTIONS AS CURRENTLY PROPOSED BY DUI COMMISSION

	REFUSAL	FAILURE/CONVICTION BAC<.15	FAILURE/CONVICTION BAC≥.15	FAILURE/CONVICTION <21 years of age
1st Offense	Suspension 1 year IID 1 year after suspension	Suspension 30 days Restrictions for 1 year IID 1 year after suspension	Suspension 1 year IID 1 year after suspension	Suspension 1 year IID 1 year if BAC ≥.15
2nd Offense	Suspension 1 year IID 2 year after suspension	Suspension 1 year IID 1 year after suspension	Suspension 1 year IID 2 year after suspension	If BAC <.15 Suspension 1 year IID 1 year after suspension If BAC ≥.15 Suspension 1 year IID 2 years after suspension
3rd Offense	Suspension 1 year IID 3 year after suspension	Suspension 1 year IID 2 year after suspension	Suspension 1 year IID 3 year after suspension	If BAC <.15 Suspension 1 year IID 2 years after suspension If BAC ≥.15 Suspension 1 year IID 3 years after suspension
4th Offense	Suspension 1 year IID 4 year after suspension	Suspension 1 year IID 3 year after suspension	Suspension 1 year IID 4 year after suspension	If BAC <.15 Suspension 1 year IID 3 years after suspension If BAC ≥.15 Suspension 1 year IID 4 years after suspension
5th or subsequent Offense	Permanent Revocation	Permanent Revocation	Permanent Revocation	Permanent Revocation

NOTE: After 45 days of initial suspension period, offender may apply to DMV for a license restricted for the remained of the one year suspension period. Restricted to one year IID and only to/from work, school, alcohol treatment, IID service, court, or court ordered supervision.

IID=Ignition Interlock Device